

## APPENDIX.

### Kentucky Revised Statutes 1942.

#### Chapter 393; Escheats\*.

##### 393.010 [1605a; 1610] Construction of chapter.

(1) As used in this chapter, unless the context requires otherwise;

(a) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;

(b) "Commissioner" means the Commissioner of Revenue;

(c) "Department" means the Department of Revenue; and

(d) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee or liquidating agent.

(2) This chapter does not apply to bonds of counties, cities, school districts or other tax-levying subdivisions of this state.

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\*"An Act relating to all classes of property actually or presumptively subject to escheat; providing the terms upon which presumption of abandonment of property and presumption of the death of persons shall be determined; providing how and when said property may be escheated to the Commonwealth of Kentucky, providing for the reduction of all such property to cash, transferring the possession of same to the Treasurer of Kentucky; providing how any person who is legally entitled thereto may recover same from the Treasurer; providing that any person transferring property to the Commonwealth as required by this Act shall be relieved of liability to the owner thereof or reimbursed for any liability or damage incurred by complying with this Act; defining certain words; providing for reports and examination of records; providing for the administration and enforcement of this Act, and for an Assistant Attorney General as incident thereto; providing fines, penalties, and imprisonment for failure to comply with this Act; providing that if any provision of this Act shall be held unconstitutional that it is the Legislative intent that all other provisions thereof shall remain in force and effect; repealing sections 1610 to 1623, inclusive of Carroll's Kentucky Statutes, Baldwin's 1936 Revision; repealing all Acts and parts of Acts in conflict with this Act; repealing Chapter 168, Acts of the Regular Session of the 1938 General Assembly of the Commonwealth of Kentucky; and repealing, amending and re-enacting sections 1606, 1607, 1608, and 1609 of Carroll's Kentucky Statutes, Baldwin's 1936 Revision." [Kentucky Acts 1940, chapter 79, p. 333.]

**393.020 [1606] Property subject to escheat.**

If any property having a situs in this state has been devised or bequeathed to any person and is not claimed by that person or by his heirs, distributees or devisees within eight years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by will, it shall vest in the state, subject to all legal and equitable demands. Also, any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section shall be liquidated, and the proceeds, less costs, fees and expenses incidental to all legal proceedings of the liquidation shall be paid to the department.

**393.030 [1607] Disposition of property subject to escheat.**

(1) The personal representatives of a person, any part of whose property is not distributed by will, and who died without heirs or distributees entitled to it shall settle their accounts within one year after qualifying, and pay to the department the proceeds of all personal property, first deducting the proper legal liabilities of the estate.

(2) If the whole personal property cannot be settled and the accounts closed within one year, the settlement as far as practicable, shall then be made and the proceeds paid to the department, and the residue shall be settled and paid as soon thereafter as can be properly done.

(3) The personal representative shall take possession of the real property of the decedent not disposed of by his will, and rent it out from year to year until it is otherwise legally disposed of, and pay the net proceeds to the department.

(4) The personal representative shall also make out and transmit to the department a description of the quantity, quality, and estimated value of the real property and its probable annual profits.

**393.040 [1608] Procedure if legacy or devise is not claimed.**

If any devisee or legatee, or his heir, devisee or distributee, has failed for eight years to claim his legacy or devise, the personal representative of the testator, or other person possessing it shall, after deducting the legal liabilities thereon, pay and deliver it, and the net profits from it to the department.

**393.050 [1609] Presumption of death after seven years; disposition of property.**

When a person owning any property having a situs in this state is not known to be living for seven successive years, and neither he nor his heirs, devisees or distributees can be located or proved to have been living for seven successive years, he shall be presumed to have died without heirs, devisees or distributees, and his property shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and the liabilities which have been properly claimed and approved against it, shall be paid to the department.

**393.060 [1610] Deposits in bank or trust company payable on demand; when presumed abandoned.**

Any deposit, (legal, beneficial, equitable or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

- (1) Negotiated in writing with the bank or trust company concerning it;
- (2) Been credited with interest on the passbook or certificate of deposit on his request;
- (3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or
- (4) Increased or decreased the amount of the deposit.

**393.070 [1610] Deposits not payable on demand; when presumed abandoned.**

Any deposit (legal, beneficial, equitable or otherwise) other than those payable on demand in any bank or trust company in this state, together with the interest thereon, shall be presumed abandoned unless the owner has, within twenty-five successive years next preceding the date as of which reports are required by KRS 393.110:

(1) Negotiated in writing with the bank or trust company concerning it;

(2) Been credited with interest on the passbook or certificate of deposit on his request;

(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or

(4) Increased or decreased the amount of the deposit.

**393.080 [1610] Deposits for security; when presumed abandoned.**

Any deposit of money, stocks, bonds or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm, and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent.

**393.090 [1610] Intangible personal property held for another; benefits on any instrument; when presumed abandoned.**

All dividends, stocks, bonds, money, credits and claims for money and credits, and all intangible personal property, and the increments of any of them, held in this state by any person for the benefit of another shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten years from the time the holder, trustee, debtor, or other responsible person became obli-

gated to return them or their equivalent to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time prescribed in this section, the instrument or evidence of the debt or obligation shall likewise be presumed abandoned.

**393.100 [1610] Property paid into court; when presumed abandoned.**

Any property paid into any court of this state for distribution, and the increments thereof, shall be presumed abandoned if not claimed within five years after the date of payment into court, or as soon after the five-year period as all claims filed in connection with it have been disallowed or settled by the court.

**393.110 [1611] Holders of abandoned property to report to department; posting of notices; duty to surrender property to department; rights of action.**

(1) It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver or in any other capacity coming within the purview of Section 7 of this Act [KRS 393.010(2); 393.060 to 393.100], to report annually to the Department as of July 1, all property held by them declared by this Act to be presumed abandoned. The report shall be filed in the offices of the Department on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department may require for the administration of this Act. The report shall be made in duplicate; the original shall be retained by the Department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the court house door or the court house bulletin board. The sheriff shall immediately certify in writing to the Department the date when said copy was posted. Said copy must

be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law.

(2) Any person who has made a report of any estate or property presumed abandoned, as required by this Act, shall, between November 1 and November 15 of each year, turn over to the Department all property so reported; but if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the Department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the Department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this Act, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the Department, but shall have the duty of notifying the Department of the pendency of such action.

(3) The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs [1942, c. 156, §§ 1, 2; Eff. June 1, 1942].



**393.120 [1612] Sale of abandoned property.**

Any intangible personal property required by KRS 393.060 to 393.110 to be liquidated so as to permit payment to the department, shall be surrendered to the department and sold by it to the highest bidder at public sale at Frankfort, or in whatever city in the state affords, in its judgment, the most favorable market for the particular property involved. The department may decline the highest bid and reoffer the property for sale if it considers the price offered insufficient. The sale shall be advertised at least one week in advance in a newspaper of general bona fide circulation in the county where the property was found or abandoned, and in the county where the sale is to be made. The sale shall be held at the court house door.

**393.130 [1613] Transferor to department relieved of liability.**

Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter.

**393.140 [1614] Claim of interest in property surrendered to state.**

(1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five years after the judgment, file his claim to it with the department.

(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no

heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

(3) The claimant shall, within fifteen days after filing any claim permitted under this section, publish notice of the claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the state. If there is no such newspaper, the claimant shall post the notice at the courthouse door and in three other conspicuous places in that county, and shall file proof of publication or posted notice with the department. No such claim shall be allowed until fifteen days after proof of the notice is received by the department at its offices in Frankfort.

"Bona fide circulation" defined, KRS 424.010.

### **393.150 [1615] Commissioner to determine claims.**

The commissioner shall consider any claim or defense permitted to be filed before the department and hear evidence concerning it. If the claimant establishes his claim, the commissioner shall, when the time for appeal or further legal procedure has expired, authorize payment to him of a sum equal to the amount paid into the State Treasury in compliance with this chapter. The decision shall be in writing and shall state the substance of the evidence heard by the commissioner, if a transcript is not kept. The decision shall be a matter of public record.

### **393.160 [1615] Appeals from decision of commissioner.**

Any person dissatisfied with the decision of the commissioner may, within sixty days, appeal from it to the Franklin circuit court or file an action in that court to vacate the decision. In either event the proceedings shall be de novo, and no transcript of the record before the commissioner shall be required to be kept unless requested by the claimant. In such proceeding the commissioner shall be made a party defendant, and all other persons required by law to be made parties in actions in rem or quasi in rem shall be made parties. Any party adversely affected by the decision of the Franklin circuit court may appeal to the



Court of Appeals within sixty days after the judgment. Upon an appeal the state shall not be required to make a supersedeas bond. The provisions of this section relating to the decision of the commissioner and appeals therefrom shall also apply to a decision of the commissioner rendered under authority of KRS 393.110.

**393.170 [1616] Property in Federal custody; determination of whether escheat has occurred.**

Whenever any property escheated under this chapter by reason of actual abandonment, or death or presumption of death of the owner without leaving any person entitled to take the legal or equitable title under the laws of this state relating to wills, or descent and distribution, has been deposited with, or in the custody or under the control of, any Federal court in and for any district in this state, or in the custody of any depository, clerk or other officer of such court, or has been surrendered by such court or its officers to the United States Treasury, the circuit court of any county in which such Federal court sits shall have jurisdiction to ascertain whether an escheat has occurred, and to enter a judgment of escheat in favor of the state. This section does not authorize a judgment to require such courts, officers, agents or depositories to pay or surrender funds to this state on a presumption of abandonment as provided in KRS 393.060 to 393.110.

**393.180 [1618] Proceedings instituted by county attorney on relation of commissioner.**

Any legal proceeding to enforce KRS 393.020 to 393.050 and to recover any sum due the state thereunder shall be instituted, on the relation of the commissioner, by the county attorney of the county in which any such property is located. The petition and all necessary pleadings shall be sent to the commissioner for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

**393.190 [1618] Assistant Attorney-General to aid county attorney.**

On any action filed by a county attorney under the provisions of this chapter, the assistant Attorney-General provided for in KRS 15.140 shall offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and revise and correct them as he considers necessary, subject to the ultimate approval of the commissioner, when he is required to sign them.

**393.200 [1618] Compensation of county attorney; commissioner may perform his duties.**

If the county attorney performs all the duties imposed upon him by this chapter relating to enforcement of KRS 393.020 to 393.050 he shall be entitled to a fee of fifteen-percent of any sum recovered in the proceeding, but shall be limited to five percent on intangible property recovered in excess of one thousand dollars. If the county attorney declines to perform the duties imposed upon him by this chapter, they may be performed by the commissioner, and the county attorney shall not be entitled to any fee. When he considers it to the best interest of the state, the commissioner may institute any action authorized by this chapter to be brought by the county attorney, or join the county attorney in the active prosecution of any such action. The county attorney shall be entitled to his fee in either instance if he does his duty.

Assistant Attorney-General assigned to Department of Revenue, KRS 15.140.

**393.210 [1618] Property in two or more counties; compensation of county attorneys.**

If the property of a person coming within the purview of KRS 393.020 to 393.050 is located in two or more counties, all the property may be included in one action. The county attorneys of all counties in which such property is located may join in the prosecution of the proceeding. Their fees shall be determined by the amount of money derived from the property located within their respective counties when

possible to determine that figure. Otherwise, the courts shall determine their fees by equitable apportionment in accordance with the value of the property located in their respective counties.

**393.220 [1618] Disposition of tangible property during proceeding.**

Pending the outcome of an action, the court may make such disposition of the land or tangible personal property involved as it considers best from the standpoints of use, rents, interest and profits. If the use of the property is given to the claimant by the court, he shall be held accountable for returns and profits arising from it if the state is successful in the proceeding.

**393.230 [1619] Proceeding to force payment of intangible property; to establish actual abandonment.**

(1) If any person or the agent of any court refuses to pay or surrender intangible property to the department as provided in KRS 393.060 to 393.110, an equitable proceeding may be brought on the relation of the commissioner to force payment or surrender. All property subject to KRS 393.060 to 393.110 may be listed and included in a single action.

(2) If any intangible property is turned over to the department on presumption of abandonment, in accordance with KRS 393.060 to 393.120, the commissioner may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned, or that the owner has died and there is no person entitled to it.

**393.240 [1619] Actions may be joined; shall be in equity.**

(1) If any person has property coming within the purview of KRS 393.020 to 393.050, and also of KRS 393.060 to 393.110, the actions required to be brought by the county attorney and the commissioner may be joined, but joinder is not required, and if separate actions are brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney is not charged with

the duty of enforcing sections KRS 393.060 to 393.120, 393.150 or 393.160.

(2) The procedure for all actions under this chapter shall be filed as equity actions and follow the procedure provided by the Civil Code of Practice, unless otherwise provided in this chapter.

**393.250 [1620] Expenses, how paid; county attorney to collect judgments, deduct fee.**

(1) Any necessary expense required to be paid by the state in administering and enforcing this chapter shall be paid out of appropriations made to the department.

(2) The county attorney shall act as agent of the department for the collection of all judgments recovered in actions prosecuted by him under this chapter. He shall deduct the fee allowed him and promptly remit the remainder to the department with such information relating thereto as the department requires.

**393.260 [1621] Limitation of State's action.**

Any action brought by the state under this chapter shall be brought within fifteen years from June 12, 1940 or from the time when the cause of action accrued, whichever is the later date.

**393.270 [1622] Person under disability, extension.**

Any person under disability affected by this chapter shall have five years after the disability is removed in which to take any action or procedure or make any defense allowed to one sui juris.

**393.280 [1622-1] Examination of records; promulgation of rules; delegation of commissioner's authority.**

(1) The department, through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter.

(2) The commissioner may promulgate any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any regular employe of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

**393.290 [1622-1] Civil action to enforce production of reports, surrender of property.**

(1) The department may require the production of reports, or the surrender of property as provided in this chapter by civil action, including an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars.

(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court.

**393.300 [1623-1] Restriction on escheat of real property held by lending corporation under supervision.**

No person shall institute proceedings to escheat real property the title to which was acquired by any lending corporation in satisfaction of debts previously contracted in the course of its business, or that it purchases under a judgment for any such debt in its favor, if such pending corporation is under the supervision of the Division of Banking of this state, Comptroller of Currency of the United States or any other duly constituted supervising banking authority, state or Federal, without first obtaining the consent of the supervising authority having supervision over that corporation.

**393.990 [1622-1] Penalties.**

Any person who refuses to make any report as required by this chapter shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not less than thirty days nor more than six months, or both.